

REMARKS

The Examiner has required an election in the present application between:

Species I, illustrated in Figs. 1 and 5; and

Species II, illustrated in Figs. 4, 6 and 7.

For the purpose of examination of the present application, Applicants elect Species I, illustrated in Figs. 1 and 5, with traverse.

Claim(s) 1 and 2 are directed to the elected species. At least claim 1 is generic to species I and II.

For a proper Election/Restriction Requirement, the Examiner must demonstrate that 1) the claims are either independent or distinct, and 2) a serious burden will be on the Examiner to examine all claims. In the absence of any statements addressing 1) and 2), the Election/Restriction Requirement is improper and therefore must be withdrawn. Applicants respectfully request that the Examiner withdraw the Election/Restriction Requirement for the following reasons.

The Examiner required the Election of Species, alleging that the species listed in the Office Action did not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features. Applicant respectfully traverses this requirement.

The requirement that all species in an application must form a single general inventive concept does not mean that all independent claims must share all technical features. In cases where there are alternative solutions to a particular problem, and where it is not appropriate to cover these alternatives by a single claim, it is within the rules of the PCT to cover these alternatives with multiple independent claims.

According to PCT Rule 13.2, Rule 13.1 “shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features” (cf. 37 C.F.R. §1.475(a)). The special technical features are the features that define the contribution the invention makes over the prior art.

In other words, Rule 13.2 demands that some features must be common to all species of the invention, not that all features are common.

In the present case it may be true that some technical features are not shared by all the species of the invention, however, all species share a number of features that represent the same inventive concept, including at least one optical demultiplexer, optical frequency converter, signal light emitting unit, spatial optical modulator, optical multiplexer, optical synthesizer, local light emitting unit, beam synthesizer, and optoelectric converter.

The several species represent embodiments of increasing complexity, where the interrelationship of the various parts are of such a nature that they cannot easily be represented as alternatives within a single independent claim or as several dependent claims referring back to one common dependent claim. However, the examiner has failed to show that the number of common features and the overall design and functionality of the several embodiments are insufficient for linking them together as alternative embodiments of one inventive concept within the meaning of PCT Rule 13.1.

Based on the above discussion, Applicant respectfully submits that the Examiner has not met his burden and has not established the absence of a “technical relationship among the inventions that involves at least one common or corresponding special technical feature”, as required by MPEP 1893.03(d). Consequently, Applicant respectfully requests that the election requirement be withdrawn.


In the event that the restriction requirement not be withdrawn, Applicant requests that upon allowance of elected independent claim 1, species II are allowed for sharing a generic claim with the elected species.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Ali M. Imam, Registration No. 58,755 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

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